

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MAURICE J. MCDONALD,)	
Inmate #B42547,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 12-cv-1257-JPG
)	
LUCAS T. MAUE,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter comes before the Court for case management. This action was opened on December 3, 2012, after Plaintiff's claim herein was severed from *McDonald v. Veath, et. al*, 12-cv-1183-JPG-PMF (filed November 16, 2012) (Doc. 1). Plaintiff was ordered to notify the Court no later than January 7, 2013, if he wished to voluntarily dismiss this case, and avoid incurring another filing fee. In the alternative, if Plaintiff decided to proceed with this action, he was ordered to pay the \$350.00 filing fee in full by January 7, 2013, because he is struck out under 28 U.S.C. § 1915(g).

In response to that Order, Plaintiff filed a motion challenging the severance of this action (Doc. 13 in Case No. 12-1183), which was denied on January 15, 2013 (Doc. 32 in Case No. 12-1183). Plaintiff was given an extended deadline of January 29, 2013, to comply with the Order at Doc. 1 (Doc. 3). Plaintiff was clearly warned that failure to do so would result in dismissal of this case with prejudice, and that he would be responsible for the full \$350.00 filing fee.

The date to comply with the Orders at Docs. 1 and 3 has passed, and Plaintiff has failed to pay the fee or notify the Court that he wishes to voluntarily dismiss this case. As a result, this action is **DISMISSED** with prejudice, for failure to comply with an Order of this Court. FED. R. CIV. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$350 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

Accordingly, to collect the filing fee Plaintiff owes the Court, the agency having custody of the plaintiff is directed to remit the \$350.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$350.00 in his account, the agency must send 20% of the current balance or the average balance during the past six months, whichever amount is higher; thereafter, the agency shall begin forwarding monthly payments from the Plaintiff's trust fund account to the Clerk of Court each time the Plaintiff's account exceeds \$10.00 until the statutory fee of \$350.00 is paid in its entirety. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this Order to the Trust Fund Officer at the Menard Correctional Center, upon entry of this Order.

The Clerk's Office is **DIRECTED** to close this case.

IT IS SO ORDERED.

DATED: February 13, 2013.

s/ J. Phil Gilbert
United States District Judge